

2008

# Lorri (Scott) Aldridge vs. Russell Scott : Brief of Appellant

Utah Court of Appeals

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Russell-Emanuel: Scott; Secured Party and Authorized Representative for Appellant/Respondent;  
In Propria Persona Appellant.

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**IN THE UTAH COURT OF APPEALS**

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LORRI (SCOTT) ALDRIDGE

Appellee/Petitioner,

vs.

RUSSELL SCOTT

Appellant/Respondent.

Case No. 20080137-CA

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**BRIEF OF APPELLANT**

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AN APPEAL FROM AN ORDER ON VARIOUS MOTIONS IN THE THIRD JUDICIAL DISTRICT COURT, MURRAY/SALT LAKE DEPARTMENT, SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE JUDGE JOSEPH C FRATTO, JR.

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In Propria Persona Appellant

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**IN THE UTAH COURT OF APPEALS**

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Appellee/Petitioner,

vs.

RUSSELL SCOTT

Appellant/Respondent.

Case No. 20080137-CA

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**BRIEF OF APPELLANT**

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**JURISDICTIONAL STATEMENT**

Defendant appeals from an Order On Various Motions based upon Petition In The Nature Of A Petition To Vacate All Order(s) and/or Judgment(s) of Decree(s) By Collateral Attack Under Authority Of Oklahoma Statute Title 12, Section 1031<sup>1</sup>,

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<sup>1</sup> **O.S. Title 12 §12-1031.** District court - Power to vacate or modify its judgments, when.

4. For fraud, practiced by the successful party, in obtaining a judgment or order.

and 1038<sup>2</sup> (Index # 466-490). The Utah Court Of Appeals has jurisdiction in this matter pursuant to § 78A(2)(a), Utah Code Ann. 2008, as amended.

### **PARTIES**

RUSSELL SCOTT, Appellant/Respondent ("Respondent"), vs LORRI (SCOTT) ALDRIDGE, Appellee/Petitioner ("Petitioner")

### **STATEMENT OF ISSUE(S)**

1. The issue(s):

- a. Respondent files with the trial court on the 8th day of August, 2007 a Petition In The Nature Of A Petition To Vacate All Order(s) and/or Judgment(s) of Decree(s) By Collateral Attack Under Authority Of Oklahoma Statute Title 12, Section 1031(4) and 1038 (Index # 466-490) which § 1038 plainly states:

"A void judgment, decree or order may be vacated at any time, on motion of a party, or any person affected thereby." (Emphasis added)

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<sup>2</sup> O.S. § 12-1038. "Limitations. Proceedings to vacate or modify a judgment, decree or order, for the causes mentioned in paragraphs 4 ... of Section 1031 of this title ... . A void judgment, decree or order may be vacated at any time, on motion of a party, or any person affected thereby."

The people of Utah can not have an inferior set of rights to the people of Oklahoma. It is apparent that Petitioner and the trial court fail in supporting, obeying and defending Respondent's constitutional rights of due process and equal protection of law in accordance of United States Constitution, Amendment(s) V and XIV, inasmuch that the Utah Constitution affirms that the State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the law of the land pursuant Article 1 § 3. Utah Law is ambiguous for the vacating of all void order(s), judgment(s) or decree(s) U.R.C.P., Rule 60(b)(4) and therefore Respondent applies the Oklahoma Law in pari materia of Kimes v. Bechtold, W/Va., S.E. 2d 147, 150 relying upon the rule of statutory construction with regards to the same subject matter which should be read, construed and applied together so that the legislature's intention can be gathered from the whole of the enactments. pursuant Oklahoma Statute ("O.S.") Title 12 O.S. § 12-1038 as applied under § 1031(4).

- b. Insufficient (defective) Service of Process pursuant Utah Rules of Civil Procedure (U.R.C.P.), Rule 5:

(1) Motion For Order To Show Cause (Index # 8) Petitioner files with the trial court on the 19th day of January, 2001, however Petitioner fails by

**not serving** Respondent in accordance of U.R.C.P., Rule 5. Service of process of Rule 5 unambiguously requires every pleading, every written motion, every written notice, appearance, demand and similar paper shall be served upon each of the parties.

**Service of Process** of an order to show cause scheduled on February 07, 2001 at 02:00 PM in Room 102 with Judge Fratto (Index #17-20) was issued on the 24th day of January, 2001 by the trial court which was served with divorce petition (Index # 1-5) and served on Respondent personally on the 29th day of January, 2001 as attested under affidavit of service (Index # 6-7) by Patrick Bishop, Deputy Constable who received the said order on the 25th day of January, 2001.

- c. Two documents were served upon Respondent (1 a verified petition for divorce (Index #1-5) and (2 a Order to Show Cause (OTSC) (Index # 17-20) or possibly (Index 21-23).
  - (a) On the 29th day of January, 2001, Deputy Constable Patrick Bishop by Constable AFFIDAVIT OF SERVICE (Index # 6-7) certifies personally serving Respondent with merely two (2) documents that being an "Order to Show Cause" and "Summons and Complaint (20) day)."

(i) The OTSC document became very confusing. Inasmuch that "The Summons" with "Verified Petition For Divorce" is standard for commencement of an action, pursuant U.R.C.P., Rule 3. The Summons requires that a Respondent files an answer within 20 days with the Clerk of the Court after receiving service. However, the OTSC as filed by the Petitioner with the Court is scheduled for an appearance by both parties on the 7th day of February, 2001 at 2:00 pm, which is a mere nine (9) days after receiving service of said Summons with Verified Petition For Divorce and the OTSC for showing cause, if any, why Petitioner should not be awarded temporary relief of the same items that requires an answer within twenty (20) days by summons of the verified petition. Below is the comparable items as listed within the Verified Petition and the OTSC:

<u>Verified Petition Item</u>	<u>Order To Show Cause Item</u>
..... 4	..... 1
..... 4	..... 2
..... 5	..... 3
..... 6	..... 4
..... 7	..... 5
..... 9	..... 8
..... 16	..... 6
.....	.....



By determinative law U.R.C.P., Rule 5, Utah Code Annotated, 1953 the plain language of the rule of law under service and filing of pleadings and other papers mandating that every motion and every written notice shall be served upon each of the parties. Clearly, the Petitioner files on the 19th day of January, 2001 with the trial court a Motion For Order To Show Cause, but fails in serving said motion on the Respondent for timely response by due process. Does determinative law permit defective service of pleadings, motion(s) and notice(s)? Wouldn't such defect make the Petitioner's Summons with Verified Petition For Divorce and Petitioner's OTSC defective? Should the trial court allow Petitioner to proceed to a conclusion without addressing Respondents Motion To Vacate The Order To Show Cause (Index # 24-25), a Motion To Set Aside Entry Of Default (Index # 32-33) and Motion For Hearing Of Expansion Of Time For Answering Verified Petition Or Stipulations (Index # 36-38)? However, the trial court grants Petitioner Temporary Orders without equal protection and due process of law allowing Petitioner's defective service of document(s) as enumerated herein items 1. b. (1), (2), (3) and (4) which by determinative law and rule of law render the trial courts' Temporary Order (Index # 89-91) void (nothing

can cure it) and defecting all subsequent Court Order(s) which said Temporary Order renders the trial court judgment(s) null and void.

(2) Statement Opting Out Of ADR Program (Index # 9) as filed with the trial court as of the 19th day of January, 2001, Petitioner does **not** serve Respondent with said statement opting out.

(3) Financial Declaration (Index #10-13) as filed with the trial court as of the 19th day of January, 2001, Petitioner does **not** serve Respondent with said financial declaration.

(4) Child Support Obligation Worksheet (sole custody and paternity) (Index # 14-16) as filed with the trial court as of the 19th day of January, 2001, Petitioner does **not** serve Respondent with said child support obligation worksheet.

d. The Utah Court of Appeals in Paar v. Stubbs, 2005 UT App 310 conclusion found at page 3, paragraph 7 ... "shall" is commonly understood to create a mandatory condition, see Pugh v. Draper City, 2005 UT 12, 13, 519 UT ADV. Rep. 9 stating that the use of "shall" in a statute is "usually presumed mandatory and has been interpreted as such in this and other jurisdictions."

(1) Plain and simple when the Petitioner fails to execute this duty, is the trial court vested with jurisdiction over the subject matter and/or Respondent?

In Paar, the Utah Court of Appeals said:

"The Paars failed to serve Stubbs with a copy of the petition; thus, the summons was defective. Therefore, the trial court was never vested with personal jurisdiction over Stubbs and was in no position to address the merits of Stubbs's lien on the Paar property pursuant to the Nullification statute. Consequently, we conclude that the trial court erred in asserting its jurisdiction and in failing to grant Stubbs's motion to dismiss."

e. Respondent soon learned that by checking the trial court's file of what Petitioner has filed with the court under certificate of service, but for some reason Petitioner fails in executing service upon Respondent as is Petitioner certifies before the court by record of such. Case in point:

- Entry of Default on the 1st day of March, 2001 failed serving Respondent.
- Counsel filed on the 21st of March, 2001 a Motion of Entry of Default scheduled for April 6, 2001, wherein counsel failed serving Respondent.
- Counsel filed on the 2nd of April, 2001 another Motion of Entry of Default stating that said default hearing is scheduled for the 9th day of April, 2001, wherein again counsel failed serving Respondent.
- Counsel filed on the 10th day of April, 2001 a Notice of Continuance indicating that the March 21, 2001 hearing was scheduled for April 9, 2001, which was dated the 22nd day of March, 2001.

2. The above motion and notice filings (1. e.) are found in the record as entered in the trial court's docket on page 3, but for some reason are not listed in the Index.

## **CONSTITUTIONAL PROVISIONS AND RULES**

Utah Rules of Civil Proc., Rule 3

Utah Rules of Civil Proc., Rule 5

Utah Rules of Civil Proc., Rule 60(a)

Utah Rules of Civil Proc., Rule 60(b)(3)

Utah Rules of Civil Proc., Rule 60(b)(4)

Utah Const. Art. I. § 3

Utah Const. Art. I. § 11

U. S. Constitution, Article 1, § 10, cls. 1

U. S. Constitution, Amend. V

U. S. Constitution, Amend. XIV § 1

3. Should the Index have "no date" of document(s) when in fact the court requires a date stamp on each entry of the filing for the record of the court? It is apparent that the Order To Show Cause (Index # 17-20 or 21-23) document is completed, finalized and dated by the trial court itself.
4. The ineffective preparation of the Index from the record(s) of the trial court itself renders the Index defective.

## **STATEMENT OF THE CASE**

5. Petitioner's defective service upon Respondent unusual assault on Respondent by serving the Summons and Verified Petition For Divorce with an Order To Show Cause (Index # 6-7) hearing scheduled to be heard on the 7th of February, 2001, when in fact service of these two (2) items was personally received on the 29th of January, 2001 from Deputy Constable Patrick Bishop. The Summons requires a response within twenty (20) days from the date of service, however the Order To Show Cause hearing is to take place within nine (9) days of service and would require oral presentments on same issues as indicated above as contained in the Verified Petition For Divorce that are yet to be answered. Petitioner's filings were complete with the Court, but incomplete for a response from Respondent for answering the summons and OTSC. Respondent believes that Petitioner counsel's strategy was to bury Respondent with the fragmented the legal process so as to produce a slam dunk for the Petitioner.
6. Petitioners' withholding of 1) Motion For Order To Show Cause; 2) Statement Opting Out Of ADR Program; 3) Financial Declaration; and 4) Child Support Obligation Worksheet, prohibited Respondent from addressing Petitioner's issues with due process under equal protection of law of a intelligible defense

of the Petitioner's Verified Petition For Divorce.

7. Petitioner under Certificate of Service certifies that Petitioner served items 1) through 4) including Entry of Default on the 1st day of March, 2001; Counsel filed on the 21st of March, 2001 a Motion of Entry of Default scheduled for April 6, 2001; Counsel filed on the 2nd of April, 2001 another Motion of Entry of Default stating that said default hearing is scheduled for the 9th day of April, 2001; and Counsel filed on the 10th day of April, 2001 a Notice of Continuance indicating that the March 21, 2001 hearing was scheduled for April 9, 2001, which was dated the 22nd day of March, 2001. Defendant is yet to receive such items from Petitioner in accord of certifying service, however service upon Respondent is defective pursuant U.R.C.P., Rule(s) 5 and 3. Without making service on Respondent of said aforesaid pleadings, motions and notices, Petitioner's counsel should be barred from proceeding into the case without having made service of the above said document(s) that are on file and in the record of the Court.

### **STATEMENT OF PROCEEDING**

The record of trial court Case No. 014200034 speaks for itself as of Petitioner's

filing(s) on the 19th day of January, 2001. This is where the defective service transpired and the record of the Court verifies of that fact in accordance or U.R.C.P., Rule 5. It is at that point that the trial court lacked the authority to move forward in the case. Petitioner and the Court denied Respondent access to the Court for hearing Respondents 1st day of February, 2001 Motion to vacate OTSC. Petitioner's Order To Show Cause hearing as Ordered by the Court for Wednesday, the 7th of February, 2001 at 2:00 PM not only denies respondent access to the Court by providing only eight (8) days for showing cause if any why the petitioner should not be awarded temporary relief of seven (7) pertinent points which in fact are identical of the requisite answers of the Verified Petition For Divorce issues that exempts the required answers within twenty (20) days time by summons.

- A. Without service the trial court lacks subject matter jurisdiction.
- B. Addendum A, Transcript of Motion Hearing, December 6, 2007, page 3, lines 11-12: MR . SCOTT: Your Honor, our purpose today is not to re-litigate the case or even be found in controversy.
- C. Addendum A, Transcript of Motion Hearing, December 6, 2007, page 4, lines 6-12: 6 MR. SCOTT: The purpose of the collateral attack is to provide an opportunity for the court to simply examine the record where pointed in

these documents and elsewhere to see if there are problems, even fatal errors, to look if proper procedure were followed, rights not violated, potentially even fraud practice or any unclean practices, etc ., that might merit the voiding of judgments based on those issues.

D. Does the rule of law permit Petitioner in disregarding service upon the Respondent?

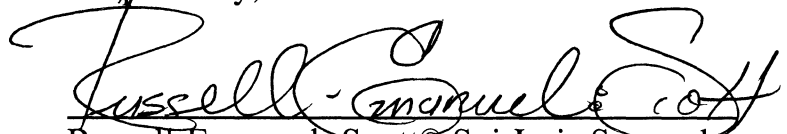
E. The record of this Case shows that the trial court believed that Petitioner can disregard serving Respondent, even though Rule 5 establishes the requirement of such.

### CONCLUSION

Based on the foregoing the Respondent respectfully requests the Court affirm Appellants Appeal of insufficient service of process.

Dated: this 19<sup>th</sup> day of September, 2008

Respectfully,

  
Russell-Emanuel :Scott© Sui Juris Secured  
Party and Agent for RUSSELL SCOTT™

™ Utah, 1955

© Utah, 1973



### CERTIFICATE OF SERVICE

I, Russell-Emanuel :Scott, certify that on the 22<sup>nd</sup> day of September, 2008, I served two (2) copies of the attached BRIEF OF APPELLANT upon Dennis L. Mangrum, the counsel for the appellee in this matter, by mailing it to him by first class mail with sufficient postage prepaid to the following address:

DENNIS L. MANGRUM #3687  
*Attorney for Petitioner/Appellee*  
7110 South Highland Drive  
Salt Lake City, Utah 84121

A handwritten signature in cursive script that reads "Russell-Emanuel Scott". The signature is written in black ink and is positioned to the right of the address block.